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APR 10 2007

Serial No. 09/840,426

Art Unit: 3749

Examiner: Carl D. Price

REMARKS

In response to the Patent Office Action of January 17, 2007, the Applicant respectfully requests reexamination and reconsideration. To further the prosecution of this application further amendments have been made in the claims, particularly independent claims 1 and 25.

Independent claim 3 has been canceled from the application. Claims 4-20 have been indicated as allowed claims by the Examiner.

On page 3 of the Patent Office Action the Examiner has set forth a rejection of claims 1-29 under 35 U.S.C. §112. The Examiner has referred to the "means" terminology such as is found in claim 1. It is the Applicant's position that the function is "flame interchanging," This is clearly described in the present application in separate embodiments as a valve switcher such as either the element 21 in Fig. 2 or the element 21' in Fig. 4.

On pages 3-6 of the Patent Office Letter the Examiner has set forth a rejection under 35 U.S.C. §103 having to rely upon four prior art patents in making this rejection namely the patents to Kanamaru U.S. Patent No. 3,309,902; Hall, Jr. U.S. Patent No. 284,631; Fosdick U.S. Patent No. 773,203; and Lowenthal U.S. Patent No. 5,308,240. It is noted that the Examiner has conceded that the Kanamaru references does not show an ignition button, a switcher cavity, a piezoelectric unit or a valve switcher that is directed orthogonally.

The Applicant has studied the Hall and Fosdick references and believes that both of these references represent non-analogous prior art to the present invention. The Hall '631 patent relates to an illumination device and an apparatus for maintaining a light of uniform illumination power. This device is not in the field of endeavor of the present invention of cigarette or cigar lighters. The Fosdick '203 patent relates to blow pipes such as are used as an ignitor for brazing or glass blowing. Accordingly, this patent also is not in the field of endeavor of the present invention. The Applicant does respectfully traverse the rejection of the present invention on the basis of these references to Hall and Fosdick.

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As an initial matter, one of ordinary skill in the art would not combine the Hall and Fosdick references because neither of these reference represent analogous art to the concepts of the present invention. There is a two-part test from the Court of Appeals for the Federal Circuit for determining whether a reference is "non-analogous art" and thus unusable under 35 U.S.C. §103(a):

"[t]he determination that a reference is from a non-analogous art is therefore two-fold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved." In re Deminski, 230 USPQ 313, 315 (1986).

It is the Applicant's position that neither of these references pass the first test in that they are not in the field of endeavor of the present invention. Moreover, with regard to the second part of the test, neither of these references is considered to be pertinent to the particular problem with which the inventor is involved. In the Hall '631 patent they are attempting to change between nozzles of different diameters for the purpose of maintaining a certain illumination power as the gas is used up. In the Fosdick '203 structure they are simply moving between different size or diameter nozzles. The present invention, on the other hand, addresses the issue of moving between different nozzle types in a cigarette lighter, such as between a visible flame, a torch flame or a windproof flame.

For the teaching of the switcher cavity, the Examiner has relied upon the Lowenthal '240 reference. Although this patent does show a cavity in which the nozzle and other components are disposed, there is no clear teaching from this reference, whether taken singly or in combination with the other references, that the valve switcher of the present invention is to be disposed in such a cavity of a housing for a lighter of the type shown by Lowenthal. It is the Applicant's position that the Examiner is using the hindsight of the present invention in making this

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combination. Again, there is simply no suggestion from these references of placing the valve switcher in the housing cavity.

Moreover, it is noted that the Applicant has now made further amendments in the two rejected independent claims that remain in the application, namely claims 1 and 25. Reference is now made to the further amendments made in these claims shown by the underlined subject matter. This now identifies in claim 1 the gas nozzles as including a windproof type nozzle and a non-windproof type nozzle. The gas nozzles are each defined as including a nozzle head and an inlet communicating with the gas valve. Moreover, the valve switcher is now defined as including a lower portion that is exposed through an aperture in the casing to enable exterior manual rotation thereof and an upper portion for supporting each nozzle head. This construction as now set forth in claims 1 and 25 is not at all taught by the combination made by the Examiner whether these references be taken singly or in combination. This further claim limitation is clearly illustrated in the present application such as at the bottom five lines on page 4. Refer also to Fig. 1 of the present invention that shows the valve switcher 21 extending through an aperture in the side of the case 10.

Accordingly, it is believed that the remaining claims in this application that have not yet been allowed should now be found in condition for allowance. These claims are believed to be patentably distinguishable over the references cited by the Examiner whether taken singly or in combination.

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant respectfully submits that all of the claims pending in the above-identified application are in condition for allowance, and a notice to that effect is earnestly solicited.

If the present application is found by the Examiner not to be in condition for allowance, then the Applicant hereby requests a telephone or personal interview to facilitate the resolution of

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any remaining matters. Applicants' attorney may be contacted by telephone at the number indicated below to schedule such an interview.

The U.S. Patent and Trademark Office is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our deposit account #19-0120.

Respectfully submitted,
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